

STATE OF MICHIGAN
COURT OF APPEALS

SLAVKO SAVESKI and LENCE SAVESKI,

Plaintiffs/Counter-Defendants-
Appellees,

V

TISEO ARCHITECTS, INC., d/b/a TISEO
BUILDERS, INC.,

Defendant/Counter-Plaintiff-
Appellant,

and

BENEDETTO TISEO,

Defendant-Appellant.

Before: Sawyer, P.J., and Wilder and Servitto, JJ.

PER CURIAM.

Defendants Tiseo Architects, Inc. d/b/a Tiseo Builders, Inc. (Tiseo Builders) and Benedetto Tiseo appeal as of right an order denying defendants' motion for sanctions, specifically attorney fees and costs. We remand for the trial court to make proper findings of fact and conclusions of law as to whether plaintiffs and their attorney at the time violated MCR 2.114 or MCL 600.2519.

Plaintiffs brought a seven-count complaint against defendants for, among other things, breach of contract, after the relationship between plaintiffs and defendants (who had been hired to perform construction management services) broke down. Defendants successfully moved for the matter to be arbitrated pursuant to an arbitration clause contained in the contract. Plaintiffs and their attorney thereafter attempted to set aside the arbitration award by arguing that plaintiff Slavko Saveski could not be bound by the award because he had not signed the contract. A bench trial was then held based on this issue. During that trial, Slavko Saveski stated that he had in fact signed the contract or let his wife, plaintiff Lence Saveski, sign for him. The trial court immediately terminated the trial and denied defendants' subsequent sanction motion without explanation.

On appeal, defendants contend that MCR 2.114(D) and/or MCL 600.2591 were clearly violated and that the trial court thus erred in denying their motion for sanctions. According to defendants, the trial court failed to conduct an appropriate evidentiary hearing on this issue and the conclusion reached by the trial court after a purported hearing on this issue was clearly erroneous.

Under MCR 2.114(D), all documents submitted by a party must be signed by that party or the party's attorney, which effectively certifies that:

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a violation of MCR 2.114(D) is found, the trial court is required to impose sanctions under MCR 2.114(E). *Contel Sys Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990). Upon a finding that a violation of MCR 2.114(D) has occurred, sanctions shall be imposed on the attorney, client, or both and may include "the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees." MCR 2.114(E).

MCR 2.625(A)(2) states that "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." Under MCL 600.2591(3)(a), a civil action is "frivolous" if at least one of the following circumstances is shown:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

The above statutory "definition of 'frivolous' parallels the provisions of MCR 2.114(D)." *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 720-721; 591 NW2d 676 (1998). If a party asserts a frivolous claim or defense under MCL 600.2591, the imposition of sanctions is required. MCR 2.625(A)(2); MCL 600.2591; *FMB-First Michigan Bank, supra* at 720-721. MCL 600.2591(2) provides that "costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees."

Whether a claim is frivolous must be determined based on the circumstances that existed at the time the claim was asserted. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36;

666 NW2d 310 (2003). Under statute and court rule, again, an attorney and the represented party have an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of the alleged claim before signing any document. See *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). Whether the inquiry was reasonable is determined by an objective standard. *Id.* Reasonableness is determined by the efforts taken in investigating a claim before filing suit, and the determination of reasonable inquiry depends on the facts of the case. *Id.* Subjective good faith is irrelevant. *Id.* However, alleged facts that are subsequently determined to be false do not invalidate a prior reasonable inquiry. *Id.*

Here, defense counsel argued that the document signed by trial counsel triggering the bench trial could not have been well grounded in fact, given plaintiff Slavko's later admission at trial concerning his signature on (or consent to) the contract. The trial court acknowledged that the matter went to arbitration pursuant to a contractual provision and that plaintiffs thereafter moved to set aside the arbitration award because plaintiff Slavko did not sign the contract. The trial court also acknowledged that a bench trial was thereafter held, during which plaintiff Slavko testified that he signed a contract or authorized his wife to sign on his behalf. The trial court then simply announced that it was denying sanctions. Because the allegations in this case are unique and necessarily require a finding of fact (concerning, at the very least, whether reasonable inquiry was made into plaintiff Slavko's participation in the contract), we remand for the trial court to make those findings. See *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34 n 12; 609 NW2d 567 (2000) (appellate court's role is to review the trial court's decision but not to make factual findings); *In re Forfeiture of Cash and Gambling Paraphernalia*, 203 Mich App 69, 70; 512 NW2d 49 (1993) (reversed and remanded where the trial court denied a motion for sanctions without making findings). On remand, the trial court is required to make the necessary findings based on the enunciated principles.¹ If the trial court finds that MCR 2.114 or MCL 600.2591 has been violated, it must impose sanctions.

We remand for the trial court to make findings of fact and conclusions of law consistent with this opinion. We retain jurisdiction and instruct the trial court to submit its findings of fact and conclusions of law in this matter to this Court within 28 days of the issuance of this opinion.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder
/s/ Deborah A. Servitto

¹ In light of this disposition, we do not address further arguments raised by the parties.

Court of Appeals, State of Michigan

ORDER

Slavko Saveski v Tiseo Architects Inc

Docket No. 261269

LC No. 99-017479-CH

David H. Sawyer
Presiding Judge

Kurtis T. Wilder

Deborah A. Servitto
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 14 days of the Clerk's certification of this order and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the trial court's findings of fact and conclusions of law shall be submitted to this Court within 28 days of issuance of this order.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand, if any, shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 19 2006
Date

Sandra Schultz Mengel
Chief Clerk